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5

6 Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 In the Matter of the Accusation Against:

Case No. AC-2005-16 (Janeski)

10 KPMG Peat Marwick, LLP
725 South Figueroa Street
Los Angeles, CA 90017
11 CPA Partnership Certificate No. PAR 157

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
KENNETH B. JANESKI, CPA 20116**

12 Bryan E. Palbaum
800 South Shamrock Avenue
13 Monrovia, CA 91016
Certified Public Accountant
14 Certificate No. CPA 51655

15 John Ming Wong
6252 Forester Drive
16 Huntington Beach, CA 92648
Certified Public Accountant
17 Certificate No. CPA 45405

18 **Kenneth B. Janeski**
355 So. Grand Avenue
19 **Los Angeles, CA 90071**
Certified Public Accountant
20 **Certificate No. CPA 20116**

21 David Akio Hori
400 E. Van Buren Street
22 Phoenix, AZ 85004
Certified Public Accountant
23 Certificate No. CPA 68236

24 Roland William ("Bill") Carroll, Jr.
540 San Geronio Street
25 San Diego, CA 92106
Certified Public Accountant
26 Certificate No. CPA 14338,

27 Respondents.

28 In the interest of a prompt settlement of this matter, consistent with the public interest and

1 the responsibilities of the California Board of Accountancy of the Department of Consumer
2 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
3 which will be submitted to the Board for approval and adoption as the final disposition of the
4 Accusation filed herein as it relates to Respondent Kenneth B. Janeski (Case No. 2005-16).

5 **PARTIES AND JURISDICTION**

6 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of
7 Accountancy. She brought this action solely in her official capacity and is represented in this
8 matter by Bill Lockyer, Attorney General of the State of California, and by Jeanne C. Werner,
9 Deputy Attorney General.

10 2. On or about April 26, 1974, the Board issued Certified Public Accountant
11 Certificate No. CPA 20116 to Kenneth B. Janeski ("respondent Janeski"). The certificate is
12 renewed through February 28, 2007, and has not been the subject of prior Board discipline.
13 Respondent Janeski is represented in this proceeding by attorney Kelly M. Hnatt of Willkie Farr
14 & Gallagher LLP, New York, NY.

15 3. The term "Accusation" refers to the Accusation on file in Board case Nos. AC-
16 2005-13 through AC-2005-17 and AC-2005-20, but as used herein refers only to the charges
17 against Respondent Janeski. Similarly, this Stipulation addresses all charges and matters in the
18 Accusation as they relate to Respondent Janeski, and does not purport to deal with other
19 respondents. This Stipulation bears Board Case No. 2005-16.

20 4. The Accusation was filed before the California Board of Accountancy,
21 Department of Consumer Affairs, and Case No. AC-2005-16 is currently pending against
22 Respondent Janeski. The Accusation and all other statutorily required documents were properly
23 served on Respondent Janeski, and Respondent timely filed his Notice of Defense contesting the
24 Accusation. A copy of the Accusation is attached as Exhibit A and incorporated herein by
25 reference. The parties stipulate that the Board has jurisdiction in this matter

26 **WAIVERS & CONTINGENCY**

27 5. Respondent Janeski has carefully read, fully discussed with counsel, and
28 understands the charges and allegations in the Accusation as they apply to him in Case No.

1 AC-2005-16. Respondent has also carefully read, fully discussed with counsel, and understands
2 the effects of this Stipulated Settlement and Disciplinary Order.

3 6. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
5 his own expense; the right to confront and cross-examine the witnesses against him; the right to
6 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
7 compel the attendance of witnesses and the production of documents; the right to reconsideration
8 and court review of an adverse decision; and all other rights accorded by the California
9 Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly,
10 and intelligently waives and gives up each and every right set forth above.

11 7. It is understood that in signing this stipulation rather than further contesting the
12 Accusation, Respondent Janeski is voluntarily consenting to the adoption of this Stipulated
13 Settlement as the Board's Decision in Case No. 2005-16, enabling the Board of Accountancy of
14 the State of California to issue the following order without further legal process. Respondent
15 Janeski represents that no tender, offer, promise, threat or inducement of any kind whatsoever
16 have been made by the Board or any member, officer, agent or representative thereof in
17 consideration of this offer or otherwise to induce him to so consent.

18 8. This stipulation shall be subject to approval by the California Board of
19 Accountancy. Respondent Janeski understands and agrees that counsel for Complainant and the
20 staff of the California Board of Accountancy may communicate directly with the Board
21 regarding this stipulation and settlement, without notice to or participation by Respondent or his
22 counsel. By signing the stipulation, Respondent understands and agrees that he may not
23 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
24 and acts upon it.

25 9. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated
26 Settlement and Disciplinary Order shall be withdrawn. It shall be of no force or effect, except for
27 this paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action
28 between the parties, and shall not be relied upon or introduced in any disciplinary, or other,

1 action or proceeding by either party hereto. In the event that the Stipulated Settlement is not
2 adopted, nothing recited herein shall be construed as a waiver of respondent's right to a hearing
3 on the truth of the Accusation's charges, or a waiver of any other right, including those rights
4 expressly waived in the Stipulated Settlement. Communications pursuant to this paragraph, and
5 consideration of this matter, shall not disqualify the Board or other persons from future
6 participation in this or any other matter affecting Respondent. Respondent agrees that should the
7 Board reject this Stipulated Settlement and if this case proceeds to hearing, Respondent will
8 assert no claim that the Board was prejudiced by its review and discussion of the Stipulated
9 Settlement or of any records related hereto. In the event that the Stipulated Settlement is not
10 adopted, Respondent is not precluded from filing a Special Notice of Defense within fifteen days
11 of his counsel being notified in writing that the Stipulated Settlement was not adopted.

12 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

13 10. The parties acknowledge that the basis for the Accusation's alleged violations of
14 California Business and Professions Code¹ Section 5100, subparagraphs (h) and (I) is the
15 decision and Order entered by the United States Securities and Exchange Commission ("SEC" or
16 "Commission") on October 20, 2004, in its case *In the Matter of KPMG LLP, Bryan E. Palbaum,*
17 *CPA, John M. Wong, CPA, Kenneth B. Janeski, CPA, David A. Hori, CPA, Respondent*
18 *(Administrative Proceeding File No. 3-11714)(see paragraph 22 of the Accusation).*² Respondent
19 herein, Kenneth Janeski, without admitting or denying the findings in the SEC Order, except as
20 to the Commission's jurisdiction over him and the subject matter of the Commission's
21 proceedings, consented, effective October 20, 2004, to the entry of an *Order Instituting Public*
22 *Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice,*
23 *Making Findings, and Imposing Remedial Sanctions ("Order").*

24 11. Respondent Janeski admits the matters alleged in paragraphs 20, 22, and 39, and
25

26 1. The California Business and Professions Code is referred to hereinafter as the "Code."

27 2. The Order is also filed as "Securities Exchange Act of 1934 Release No. 50564 /
28 October 20, 2004" and "Accounting And Auditing Enforcement Release No. 2125 / October 20,
2004."

1 that the SEC's Order, described above and in the Accusation, provides the basis for violations of
2 Code Section 5100, subparagraphs (h) and (I), as alleged in paragraphs 41 and 43 of the
3 Accusation, as they pertain to him.

4 12. Respondent Janeski agrees that his CPA Certificate is subject to discipline under
5 Code Sections 5100(h) and 5100(I) as set forth in the Accusation, and agrees to be bound by the
6 Board's imposition of discipline as set forth in the disciplinary order below. Respondent further
7 agrees not to take any action or make any public statement that creates, or tends to create, the
8 impression that any of the matters set forth in the Stipulated Settlement, Order and Decision are
9 without a factual basis. It is not the intent of the board, however, to prevent Respondent from
10 testifying or responding truthfully in civil litigation or regulatory matters, including where he is
11 required to do so by any court of law or regulatory body.

12 13. The parties understand and agree that facsimile copies of this Stipulated
13 Settlement, including facsimile signatures thereto, shall have the same force and effect as the
14 originals.

15 14. The Board, in accepting this stipulation, is foregoing its right to institute further
16 disciplinary proceedings, including filing charges in addition to the charges contained in the
17 Accusation, against Respondent's license based upon conduct arising out of the audits and
18 reviews of the financial statements of Gemstar for the period covered in the Accusation.
19 However, in the event that Case Nos. AC-2005-13 through AC-2005-17, and AC-2005-20, are
20 not resolved effective April 1, 2005, the Board reserves the right to initiate or continue
21 investigations and administrative proceedings related to the conduct of Board licensees who may
22 have been involved in the acts or omissions underlying the SEC's allegations and Order as well
23 as any other violations of the Accountancy Act which may have occurred by Board licensee(s) in
24 the Gemstar engagements. In those circumstances, Respondent voluntarily agrees to fully
25 cooperate with, and, upon reasonable notice, make himself available to, the Board and its
26 designees, without the necessity of a subpoena, in any investigation of other Board licensees
27 regarding the Gemstar engagements, including, but not limited to, the providing of interviews,
28 statements, affidavits, declarations, and any other documents or other types of information

1 requested, consistent with the requirements of confidentiality and law. Respondent, if called to
2 do so, shall cooperate with the Board and shall, upon reasonable notice, testify at any subsequent
3 administrative or civil proceeding if asked to do so by the Board. Finally, this provision shall not
4 have the effect of limiting in any way the Board's monitoring of Respondent's compliance with
5 the terms of this order.

6 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations, the
7 parties agree that the Board may, without further notice or formal proceeding, issue and enter the
8 following Disciplinary Order:

9 **DISCIPLINARY ORDER**

10 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 20116
11 to Respondent Kenneth B. Janeski is revoked. However, the revocation is stayed and
12 Respondent is placed on probation for three (3) years on the following terms and conditions.

13 1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 20116
14 issued to Kenneth B. Janeski is suspended for sixty (60) days. During the period of suspension,
15 Respondent shall engage in no activities for which certification as a Certified Public Accountant
16 or Public Accountant is required as described in Business and Professions Code, Division 3,
17 Chapter 1, Section 5051.

18 2. **Obey All Laws.** Respondent shall obey all federal, California, other
19 states' and local laws, including those rules relating to the practice of public accountancy in
20 California.

21 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days
22 of completion of the quarter, written reports to the Board on a form obtained from the Board.
23 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,
24 and verification of actions as are required. These reports, declarations, and/or verifications shall
25 contain statements relative to Respondent's compliance with all the terms and conditions of
26 probation. Respondent shall immediately execute all release of information forms as may be
27 required by the Board or its representatives to confirm Respondent's compliance with the terms
28 and conditions of probation.

- 1 4. **Personal Appearances.** Respondent shall, during the period of probation,
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives, provided such notification is accomplished in a timely manner.
- 4 5. **Comply With Probation.** Respondent shall fully comply with the terms and
5 conditions of the probation imposed by the Board and shall cooperate fully with representatives
6 of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
7 with probation terms and conditions.
- 8 6. **Cooperate with Board.** Respondent will cooperate with Board investigations as
9 provided in paragraph 14 above.
- 10 7. **Practice Investigation.** Respondent shall be subject to, and shall permit,
11 practice investigation of the Respondent's professional practice. Such a practice investigation
12 shall be conducted by representatives of the Board, provided notification of such review is
13 accomplished in a timely manner. However, Respondent acknowledges that the Board may
14 confirm, without notice to Respondent, that Respondent is in compliance with Business and
15 Professions Code Section 5051 during the suspension period.
- 16 8. **Comply With Citations.** Respondent shall comply with all final orders resulting
17 from citations issued by the Board of Accountancy.
- 18 9. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
19 Respondent should leave California to reside or practice public accountancy outside this state,
20 Respondent must notify the Board in writing of the dates of departure and return. Periods of
21 non-California residency or practicing public accountancy outside the state shall not apply to
22 reduction of the probationary period, or of any suspension. No obligation imposed herein,
23 including requirements to file written reports, reimburse the Board costs, or make restitution to
24 consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or
25 practice except at the written direction of the Board.
- 26 10. **Active License Status.** Respondent shall at all times maintain an active license
27 status with the Board, including during any period of suspension. If the license is expired at the
28 time the Board's decision becomes effective, the license must be renewed within 30 days of the

1 effective date of the decision.

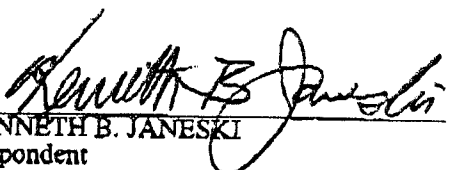
2 11. **Violation of Probation.** If Respondent violates probation in any respect, the
3 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and
4 carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation
5 is filed against Respondent during probation, the Board shall have continuing jurisdiction until
6 the matter is final, and the period of probation shall be extended until the matter is final.

7 12. **Completion of Probation.** Upon successful completion of probation,
8 Respondent's license will be fully restored.

9
10 ACCEPTANCE

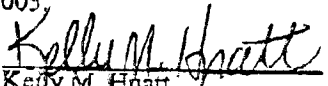
11
12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
13 fully discussed it with my attorney, Kelly M. Hnatt. I understand the stipulation and the effect it
14 will have on my CPA Certificate. I enter into this Stipulated Settlement and Disciplinary Order
15 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
16 California Board of Accountancy.

17 DATED: March 9, 2005.

18 
19 KENNETH B. JANESKI
20 Respondent

21 I have read and fully discussed with Respondent Kenneth B. Janeski the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: March 10, 2005.

25 
26 Kelly M. Hnatt
27 Willkie Farr & Gallagher LLP
28 Attorney for Respondent


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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: March 10, 2005.

BILL LOCKYER, Attorney General
of the State of California


JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

Handwritten initials: JW

1 Janeski stipulation.wpd

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2005-16 (Janeski)

KPMG LLP
CPA Partnership Certificate No. PAR 157

Bryan E. Palbaum
CPA Certificate No. CPA 51655

John Ming Wong
CPA Certificate No. CPA 45405

Kenneth B. Janeski
CPA Certificate No. CPA 20116

David Akio Hori
CPA Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.
CPA Certificate No. CPA 14338,

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 1, 2005.

It is so ORDERED on March 25, 2005.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
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